

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA

Plaintiff,

v.

APPROXIMATELY \$1,200,000 IN  
U.S. CURRENCY SEIZED FROM FIRST  
CALIFORNIA BANK ACCT. NO.  
2005638, et. al,

Defendants.

No. Civ. 05-149 DFL KJM

MEMORANDUM OF OPINION AND  
ORDER

This is a civil forfeiture action in which the government has seized funds held in three separate accounts in the amount of \$1.2 million, \$225,958.84, and \$177,695.11 respectively. The government seizure rests on a claim that the funds are the proceeds of fraud. Claimant John Hollis ("Hollis") moves to stay the proceeding under 18 U.S.C. 981(g)(2) because he is presently the subject of a related criminal investigation. The government opposes this motion and has filed a cross-motion to dismiss Hollis' claim. It argues that Hollis does not have Article III standing to claim an interest in the defendant funds and that

Hollis lacks statutory standing to seek a motion to stay because he has not filed an answer. The government also asserts that, even if Hollis has standing, the court should issue, at most, a protective order rather than a stay. For the reasons stated below, the court: (1) GRANTS the government's motion to dismiss Hollis' claim as to the seizure of the \$1.2 million and the \$177,695.11; (2) DENIES the government's motion to dismiss regarding the \$225,958.84; and (3) enters a protective order that limits discovery in the forfeiture proceeding to the issue of Hollis' Article III standing until the criminal investigation and prosecution of Hollis has concluded.

I.

On August 10, 2004, the government filed a criminal complaint against Robert Lewis Brown, a.k.a. Matthew Schachter ("Brown"). (Mot. to Stay at 3.) The complaint alleges that Brown and others sold worthless insurance policies, through Tri-Continental Exchange, Ltd. ("TCE") and Combined Services Ltd. ("CSL"). (Gov't Opp'n at 7.) The government also alleges that Hollis represented that he was Brown's counsel and that Hollis transferred funds on Brown's behalf. (Mot. to Stay at 3.)

Between June 2001 and August 2002, Brown wired approximately \$5 million from the TCE bank account to an account at the Royal Bank of Canada. (Gov't Opp'n at 8.) During the summer of 2003, the bank told Brown that it was closing his account. (Id.) Before the account closed, Brown transferred approximately \$2.3 million to a First California Bank account held by Hollis. (Id.)

1 Six weeks later Hollis transferred \$1.8 million of those funds to  
2 an account at Jyske Bank in Gibraltar. (Id.) In mid-September  
3 2004, about two weeks after Brown's arrest, Jyske Bank  
4 transferred \$1.2 million back to Hollis' First California Bank  
5 account. (Id. at 9.)

6 The government further claims that Hollis assisted Brown in  
7 moving another \$602,076.07. (Cross Mot. at 9.) Hollis allegedly  
8 told law enforcement agents in July 2004 that TCE maintained a  
9 reserve fund of approximately \$600,000 to pay potential insurance  
10 claims. (Id.) These funds were held by Scotiabank in the  
11 Bahamas. (Id.) On September 15, 2004, Scotiabank wired these  
12 funds to Hollis' First California Bank account. (Id. at 10.)

13 On September 17, 2004, a representative from First  
14 California Bank told Hollis that the government had seized the  
15 \$1.2 million that was wired from Jyske Bank but had not yet  
16 seized the \$602,076.07 that had just arrived from Scotiabank.  
17 (Id.) Hollis responded, "I'll be moving them then." (Id.)  
18 Hollis wrote a \$284,000 check to himself and deposited it into  
19 his personal Bank of America account. (Id.) The government  
20 seized \$225,958.84 of these funds on September 29, 2004. (Hollis  
21 Mot. at 4.) Hollis also wired \$300,000 to the Bullivant Houser  
22 and Bailey law firm ("Bullivant funds"). (Gov't Mot. at 10.)  
23 Bullivant voluntarily turned over \$177,695.11 to the government.  
24 (Id. at 11.) In sum, the government seized \$1.2 million from  
25 Hollis' First California Bank account, \$225,958.84 from Hollis'  
26 Bank of America account, and \$177,695.11 from the Bullivant law

1 firm. These funds are the defendants in this action.

2 On January 24, 2005, the government filed a Verified  
3 Complaint for Forfeiture in Rem. The complaint alleges that the  
4 funds described above "were each involved in, or traceable to,  
5 money laundering violations and/or constitute or are derived from  
6 the proceeds of mail fraud, or a conspiracy to commit such  
7 offenses." (Hollis Mot. at 4.)

8 Before any claimant appeared, the action was stayed by  
9 stipulation pending the conclusion of the criminal case against  
10 Brown, or the expiration of six months, whichever should occur  
11 first. In the stipulation and order staying the case, Brown  
12 asserted that he was the owner of all the funds at issue in this  
13 case. (5/11/2005 Stipulation & Order ¶ 2.) In addition, Hollis  
14 asserted an interest in the funds seized from his trust and  
15 personal accounts, including the \$1.2 million seized from his  
16 First California Bank account and the \$225,958.84 seized from his  
17 Bank of America account. (Id. ¶ 1.) Hollis also stipulated that  
18 approximately \$54,497.79 of these funds represented payment for  
19 legal fees, costs, and expenses earned by Hollis and other legal  
20 counsel for Brown prior to the seizure. (Id.) Hollis did not  
21 claim an interest in the Bullivant funds. (Id.) Indeed, on  
22 September 23, 2005, the parties stipulated that Bullivant held  
23 the funds in trust for Brown. (9/23/2005 Stipulation & Order ¶  
24 1-2.)

25 During the period of the stay, Brown died in custody and the  
26 government dismissed the criminal charges against him. (Id. at

12.) On December 19, 2005, after Brown died, Hollis filed a statement of interest in the defendant funds seized from his personal and trust accounts (\$1.2 million and \$225,958.84). (12/19/2005 Statement of Interest at 1.) He also stated a claim to the Bullivant funds as "trustee." (Id. at 1-2.)

On January 4, 2006, Hollis filed a motion to stay and an amended statement of interest. In the amended interest statement, Hollis asserts that he has: (1) an ownership and possessory interest in the \$225,958.84 seized from his Bank of America account; (2) an ownership interest in the \$177,695.11 Bullivant funds; and (3) a possessory interest in the \$1.2 million seized from his First California Bank account because those funds were "placed into his account in his (Hollis') capacity as an agent and trustee for 'Robert Brown'." (First Am. Statement of Interest at 1-2.)

On March 7, 2006, without leave of court, Hollis filed a second amended statement of interest with his opposition to the government's cross-motion to dismiss. In the second amended interest statement, Hollis asserts that his First California Bank account is an attorney-client trust account. (Second Am. Statement of Interest ¶ 1.) He claims that he maintained the \$1.2 million in that account on behalf of Brown, and that he "is duly authorized and responsible to seek return of said funds." (Id.) Hollis also claims an ownership interest in the \$225,958.84 seized from his personal Bank of America account because the funds represent "legal fees that he earned as

1 income." (Id. ¶ 2.) Finally, Hollis claims an ownership  
2 interest in the \$177,695.11 seized from Bullivant. (Id. ¶ 3.)  
3 He asserts that he advanced the funds to Bullivant as attorney  
4 fees. (Id.) When Bullivant terminated its representation,  
5 Hollis claims Bullivant had a duty to return the balance of the  
6 funds to Hollis. (Id.)

7 II.

8 Hollis moves to stay this civil forfeiture proceeding under  
9 18 U.S.C. § 981(g) (2):

10 Upon the motion of a claimant, the court shall stay the  
11 civil forfeiture proceeding with respect to that  
12 claimant if the court determines that - (A) the  
13 claimant is the subject of a related criminal  
14 investigation or case; (B) the claimant has standing to  
15 assert a claim in the civil forfeiture proceeding; and  
16 (C) continuation of the forfeiture proceeding will  
17 burden the right of the claimant against self-  
18 incrimination in the related investigation or case.

15 The government stipulates that Hollis "is the subject of a  
16 related criminal investigation or case." (Cross Mot. at 4.)  
17 However, the government argues that Hollis does not have either  
18 statutory or Article III standing to assert a claim. (Id. at 4,  
19 25-28.) In assessing whether Hollis has standing, the government  
20 urges the court to ignore Hollis' second amended statement of  
21 interest because he filed it without leave to amend, in violation  
22 of Fed. R. Civ. P. 15(a). (Reply at 2-3.) Finally, the  
23 government argues that, even if Hollis did have standing, he has  
24 not shown why a protective order rather than a stay would be  
25 insufficient. (Id.)  
26

1 A. Hollis' Second Amended Statement of Interest

2 A statement of interest is a responsive pleading. Fed. R.  
3 Civ. P. Supplemental Rule C(6). Fed. R. Civ. P. 9(h) states that  
4 amendment of such a pleading is governed by Fed. R. Civ. P. 15.  
5 Under Rule 15(a), a claimant may amend his statement of interest  
6 at "any time within 20 days after it is served." Fed. R. Civ. P.  
7 15(a). Otherwise, he may only amend "by leave of court or by  
8 written consent of the adverse party." Id.

9 Hollis filed his first statement of interest on December 19,  
10 2005. (See Docket # 33.) He filed his first amended statement  
11 within 20 days on January 4, 2006. (See Docket # 37.) However,  
12 he did not file his second amended statement until March 7, 2006,  
13 well beyond the 20 day limit. (See Docket # 52.) Therefore, the  
14 second amended statement of interest is a nullity that should not  
15 be considered by the court. See Colbert v. City of Philadelphia,  
16 931 F.Supp. 389, 393 (E.D.Pa. 1996) (citing Fed. R. Civ. P.  
17 15(a)) (federal district court did not consider untimely second  
18 amended complaint because plaintiffs did not request leave to  
19 amend).

20 Even if Hollis had requested leave to amend, Hollis has not  
21 shown why he would be entitled to such an amendment. When ruling  
22 on a motion for leave to amend, courts consider factors such as  
23 undue delay, bad faith or dilatory motive, futility of amendment,  
24 and undue prejudice to the opposing party. Poling v. Morgan, 829  
25 F.2d 882, 886 (9th Cir. 1987). Here, Hollis appears to be acting  
26 in bad faith by attempting to amend because: (1) he contradicts

1 his previous statements; and (2) he could have made these factual  
2 allegations earlier. For instance, he now asserts for the first  
3 time that the \$225,958.84 seized from his personal Bank of  
4 America represents "legal fees that he earned as income." (Id. ¶  
5 2.) He also asserts for the first time that the funds that he  
6 advanced to Bullivant were to be used as attorneys fees, and  
7 that, upon Brown's death, Bullivant had a duty to return those  
8 fees. (Second Am. Statement of Interest ¶ 3.) However, these  
9 assertions contradict Hollis previous stipulation on May 11, 2005  
10 that only \$54,497.79 of the defendant funds represented payment  
11 for legal fees, costs, and expenses. (5/11/2005 Stipulation &  
12 Order ¶ 1.) Moreover, Hollis gives no reason why he could not  
13 have claimed earlier that these funds represented legal fees and  
14 costs. As such, it appears that Hollis has only amended his  
15 statement of interest in a bad faith attempt to re-shape his  
16 factual assertions to circumvent the arguments made by the  
17 government in its motion to dismiss.

18 For these reasons, the court disregards Hollis' second  
19 amended statement of interest.

20 B. Statutory Standing

21 Hollis concedes that to satisfy Section 981(g)(2)(B)'s  
22 standing requirements he must "establish standing both under Rule  
23 C(6) of the Supplemental Rules for Certain Admiralty and Maritime  
24 Claims ('Rule C(6)') and under Article III of the United States  
25 Constitution." (Mot. to Stay at 5-6). The government argues  
26 that Hollis has failed to establish standing under Rule C(6)



1 because he has not yet filed an answer. (Cross Mot. at 25-28.)

2 To satisfy the statutory standing requirements, Hollis must  
3 file both: (1) a verified statement within 30 days of receipt of  
4 the government's complaint or completed publication, and (2) an  
5 answer within 20 days after the filing of the statement." Fed.  
6 R. Civ. P. Supplemental Rule C(6). The purpose behind Rule C(6)  
7 is "to inform the court that there is a claimant to the property  
8 who wants it back and intends to defend it." United States v.  
9 Real Property, 135 F.3d 1312, 1317 (9th Cir. 1998).

10 The district court has discretion to allow late filing of an  
11 answer. United States v. Real Property at 2659 Roundhill Dr.,  
12 Alamo, Cal., 194 F.3d 1020, 1024 (9th Cir. 1999). "Although a  
13 formal extension request is surely envisioned, the district court  
14 has 'discretion to overlook the failure to conform to the  
15 requirements of Rule C(6).'" Id. (citing United States v. 2930  
16 Greenleaf Street, 920 F.Supp. 639, 644 (E.D.Pa. 1996)). An  
17 answer is not required for the court to grant a motion to stay.  
18 See United States v. 14280 NW Tradewinds Street, No. Civ. 00-  
19 1506-FR, 2001 WL 34050118 at \*1-2 (D.Or. May 17, 2001) ("Barajas  
20 1") (court granted motion to stay before answer was filed,  
21 accepting claimant's argument that he could not file an answer  
22 without burdening his right against self-incrimination in a  
23 related criminal case); United States v. 29.77 Acres, No. Civ.  
24 00-1505-FR, 2001 WL 34050119 at \*1 (D.Or. May 22, 2001) ("Barajas  
25  
26

1 2") (same).<sup>1</sup>

2 The court has found only one reported decision where a  
3 claimant was dismissed for failing to file a timely answer -  
4 United States v. \$288,914 in U.S. Currency, 722 F.Supp. 267 (E.D.  
5 La. 1989). In that case, the court chose to enforce Rule C(6)  
6 because the claimants also failed to appear at their depositions  
7 and demonstrated a lack of interest in pursuing their claim. Id.

8 Given this case law, the court will allow Hollis to file a  
9 late answer. Hollis filed his original statement of interest on  
10 December 19, 2005. (Docket # 33.) Two days later, on December  
11 21, 2005, Hollis filed a stipulation and proposed order to extend  
12 time to respond to the complaint. (Docket # 34.) The court  
13 signed the proposed order on December 29, 2005, giving Hollis  
14 until February 9, 2006 to file an answer. (Docket # 36.) Five  
15 days after that, Hollis filed the motion to stay and his first  
16 amended statement of interest. (Docket ## 37, 38.) Hearing for

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17  
18 <sup>1</sup> The government claims that these cases are too conclusory  
19 to offer guidance because neither addresses the standing  
20 requirements of Rule C(6), and neither discusses "the explicit  
21 language of Section 981(g)(3), which evidences that Congress  
22 intended the stay provisions in 981(g) to apply to discovery, not  
23 pleading practice." (Opp'n at 27-28.) However, both cases  
24 recognize that Rule C(6) applies. See Barajas 1 at \*2; Barajas 2  
25 at \*1. Moreover, section 981(g)(3) does not limit the stay  
26 provisions to discovery. The section merely clarifies what a  
court can do "with respect to the impact of civil discovery." 18  
U.S.C. § 981(g)(3) ("With respect to the impact of civil  
discovery . . . the court may determine that a stay is  
unnecessary if a protective order limiting discovery would  
protect the interest of one party without unfairly limiting the  
ability of the opposing party.") The section does not state that  
stay provisions cannot also apply to pleading practice. Finally,  
the issue here is not whether a stay should enter but whether an  
answer must be on file prior to seeking a stay of discovery or  
opposing a motion to dismiss.

1 the motion was set for February 1, 2006, before the February 9  
2 deadline for the answer. (Id.) However, because the government  
3 filed a cross-motion to dismiss, the hearing date was reset for  
4 March 29 to give the parties sufficient time to file the  
5 necessary oppositions and replies. (Docket # 47.)

6 It appears that Hollis only missed the February 9 deadline  
7 to file an answer because of the continuance of the hearing on  
8 the motion to stay. There is no question that Hollis "is a  
9 claimant to the property who wants it back and intends to defend  
10 it." See Real Property, 135 F.3d at 1317. Moreover, Hollis has  
11 stated that he "is prepared to file an [a]nswer if the [c]ourt  
12 deems it necessary prior to granting the stay." (Hollis Opp'n at  
13 2 n.3.) For these reasons, the court will permit Hollis to file  
14 a late answer and finds that Hollis has statutory standing to  
15 pursue a motion to stay prior to the filing of the answer.

16 C. Article III Standing

17 \_\_\_\_\_ "To demonstrate standing under Article III . . . a litigant  
18 must allege a 'distinct and palpable injury to himself' that is  
19 the direct result of the 'putatively illegal conduct of the  
20 [adverse party]' and 'likely to be redressed by the requested  
21 relief.'" United States v. Cambio Exacta, S.A., 166 F.3d 522,  
22 527 (2d Cir. 1999) (quoting Warth v. Seldin, 422 U.S. 490, 501,  
23 95 S. Ct. 2197 (1975); Gladstone Realtors v. Village of Bellwood,  
24 441 U.S. 91, 99, 99 S.Ct. 1601 (1979); and Simon v. Eastern Ky.  
25 Welfare Rights Org., 426 U.S. 26, 44-45, 96 S. Ct. 1917 (1976)).

26 In a forfeiture action, a claimant may establish standing by

1 demonstrating an ownership or possessory interest. United States  
2 v. \$100,348.00 in U.S. Currency, 354 F.3d 1110, 1118 (9th Cir.  
3 2004). Such interests usually establish standing because they  
4 are "reliable indicators of injury that occurs when property is  
5 seized." Cambio Exacta, 166 F.3d at 527. However, "the injury  
6 to the party . . . remains the ultimate focus." For this reason,  
7 courts have "denied standing to 'straw' owners who do indeed  
8 'own' the property, but hold title to it for somebody else. Such  
9 owners do not themselves suffer an injury when the property is  
10 taken." Id.; accord United States v. One Parcel of Land, 902  
11 F.2d 1443, 1444 (9th Cir. 1990) (possession of legal title by one  
12 who does not exercise dominion and control over the property is  
13 insufficient to establish standing); United States v. Vacant  
14 Land, 15 F.3d 128, 130-31 (9th Cir. 1993) (same). In addition,  
15 "where a mere custodian has possession, it is only a 'naked claim  
16 of possession' and does not thereby impart Article III standing."  
17 Cambio Exacta, 166 F.3d at 527.

18 \_\_\_\_\_ Standing "must be supported in the same way as any other  
19 matter on which the plaintiff bears the burden of proof, i.e.,  
20 with the manner and degree of evidence required at the successive  
21 stages of the litigation." Lujan v. Defenders of Wildlife, 504  
22 U.S. 555, 561, 112 S.Ct. 2130 (1992). Because the parties here  
23 are at the pleading stage, Hollis only has the burden to prove  
24 that the facts he has alleged, if true, would entitle him to some  
25 form of legal remedy. See Conley v. Gibson, 355 U.S. 41, 45-46  
26 (1957). A claimant in a forfeiture proceeding is not required to

1 submit additional evidence of ownership along with his claim to  
2 establish standing. David B. Smith, Prosecution and Defense of  
3 Forfeiture Cases ¶ 9.04[2][b] (2005); see also United States v.  
4 \$515,060.42 in U.S. Currency, 152 F.3d 491, 498 (6th Cir. 1998).

5 \_\_\_\_\_ Courts look to the state law in which the parties' interests  
6 arose to determine the legal sufficiency of those interests.

7 United States v. Real Property Located at 5208 Los Franciscos  
8 Way, Los Angeles, CA, 385 F.3d 1187, 1191 (9th Cir. 2004). The  
9 parties here agree that California law applies.

10 1. \$1.2 million Seized from Client Trust Account

11 \_\_\_\_\_ In his first amended statement of interest, Hollis asserts  
12 that he has a possessory interest in the \$1.2 million seized from  
13 his account at First California Bank because those funds were  
14 placed into the account in his capacity as an agent and trustee  
15 for Brown. (First Am. Statement of Interest at 2.) The  
16 government contends that the agency relationship between Hollis  
17 and Brown terminated upon Brown's death, and, therefore, Hollis'  
18 asserted possessory interest is untenable. (Cross Mot. at 19.)

19 The government is correct that the relationship of client  
20 and attorney is one of principal and agent, Monell v. College of  
21 Physicians and Surgeons of San Francisco, 198 Cal.App.2d 38, 51  
22 (1962), and that a client's death terminates the attorney's  
23 authority. Swartfager v. Wells, 53 Cal.App.2d 522, 527-28  
24 (1942). However, "agency principles are not controlling when  
25 determining the existence and scope of an attorney's duties to a  
26 client." Streit v. Covington & Crowe, 82 Cal.App.4th 441, 446

1 (2000).

2 In California, the attorney must maintain a proper account  
3 balance in a client trust account. Cal. Rule of Prof. Resp. 4-  
4 100(A). Indeed, failure to maintain a sufficient balance creates  
5 a presumption of misappropriation. Matter of Bleecker, 1 Cal.  
6 State Bar Ct. Rptr. 113, 122-23 (Rev. Dept. 1990). This duty  
7 continues even upon a client's death. See Cal. State Bar Form  
8 Opn. 1975-36. "Upon a client's death, the attorney must notify  
9 the client's relatives or estate representative of possession of  
10 client funds or property." Paul W. Vapneck, et al., California  
11 Practice Guide: Professional Responsibility § 9:222 (2005). If  
12 the estate does not claim the funds within three years, the  
13 attorney must complete procedures to have the abandoned funds  
14 escheat to the state under the Unclaimed Property Law. Cal. Civ.  
15 Proc. Code § 1518(a). Therefore, even though an attorney's  
16 authority to act on behalf of the client terminates upon a  
17 client's death, the attorney must still maintain the client's  
18 funds for the estate for up to three years.

19 However, the issue here is not maintenance of the funds for  
20 benefit of the client's estate. There is no evidence of an  
21 estate or any instructions from Brown's heirs. Rather, the issue  
22 is whether the attorney for a deceased client has the authority  
23 or duty to undertake litigation, without instruction from a  
24 representative of the client, to protect a deceased client's  
25 funds against civil forfeiture. While California law does not  
26 directly address this issue, the law regarding an attorney's duty

1 when dealing with third-party creditors provides guidance.

2 California Rule of Professional Conduct 4-100(B)(4) states  
3 that when a client requests the funds in his client trust  
4 account, the attorney must "[p]romptly pay or deliver . . . [the  
5 funds] which the client is entitled to receive." However, the  
6 client may not be "entitled to receive" all funds in the account.

7 ABA Model Rule 1.15 recognizes that:

8 Third parties, such as the client's creditors, may have  
9 just claims against funds or other property in a  
10 lawyer's custody. A lawyer may have a duty under  
11 applicable law to protect such third-party claims  
12 against wrongful interference by the client, and  
13 accordingly may refuse to surrender the property to the  
14 client. However, a lawyer should not unilaterally  
15 assume to arbitrate a dispute between the client and  
16 the third party.

17 Cal. Ethics Op. 1988-101, 1988 WL 236373 (citing ABA Model Rule  
18 1.15.) The California State Bar Committee on Professional  
19 Responsibility and Conduct notes that when a dispute arises  
20 between a client and a third party, "[a]n attorney is ill-advised  
21 to unilaterally prejudge the merits of such disputes and act in  
22 favor of one individual or the other." Id. Therefore, "[t]he  
23 safest course of action . . . is to commence a civil action in  
24 interpleader by which the attorney divests him or herself of  
25 responsibility for the funds and leaves the resolution of the  
26 dispute to the court." Id. (citing Cal. Civ. Proc. Code § 386 et  
seq.)

27 Here, interpleader is both unnecessary and unavailable  
28 because by the government's seizure the funds are already within  
29 the control of the court. See William W. Schwarzer, et. al,

California Practice Guide: Federal Civil Procedure Before Trial § 10:80 (2005) (citing Gen. Atomic Co. v. Duke Power Co., 563 F.2d 53, 56 (10th Cir. 1977)). Applying the analogy of third-party-creditor law to the situation here, it appears that Hollis has no further professional duty with respect to the funds. The estate of Brown, if it exists, may come forward to make a claim. But the funds do not belong to Hollis and he has no further duty to litigate on behalf of a deceased client. Therefore, Hollis does not have standing to assert an interest in the \$1.2 million that was deposited in the client trust account. Accordingly, the court GRANTS the government's motion to dismiss regarding the defendant \$1.2 million.<sup>2</sup>

## 2. \$225,958.84 Seized from Hollis' Bank of America Account

Hollis asserts in his first amended statement of interest that he has an ownership interest in the defendant \$225,958.84 because it was seized from his personal Bank of America account. (First Am. Statement of Interest at 1.) The government responds by arguing that Hollis should have explained his interest more

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<sup>2</sup> On June 23, 2006, Hollis notified the court about the recent holding in Via Mat Int'l S. Am. Ltd. v. United States, 446 F.3d 1258 (11th Cir. 2006), asserting that it is related to whether Hollis has standing to assert an interest in the \$1.2 million. In Via Mat, the government seized funds from an air carrier who was transporting the funds on behalf of a currency exchange house. The court held that the air carrier had standing to contest forfeiture because it was liable to the currency exchange house for any monies that were not returned. Via Mat does not apply here because, unlike the air carrier, Hollis no longer has a duty to maintain the funds for Brown or his estate. Therefore, Via Mat does not change the court's conclusion regarding Hollis' standing.



1 thoroughly, particularly given the appearance of fraud.<sup>3</sup> (Reply  
2 at 2.) However, at this stage of the litigation Hollis is not  
3 required to submit additional evidence of ownership along with  
4 his claim to establish standing.<sup>4</sup> David B. Smith, Prosecution and  
5 Defense of Forfeiture Cases ¶ 9.04[2][b] (2005). He can survive  
6 a motion to dismiss so long as he makes general factual  
7 allegations of injury. Lujan, 504 U.S. at 561. The government's  
8 argument that Hollis was a "straw man" is better suited to a  
9 motion for summary judgment, where Hollis would have a greater  
10 burden to produce evidence in support of his claim. Therefore,  
11 the court DENIES the government's motion to dismiss regarding the  
12 defendant \$225,958.84.

13 3. \$177,695.11 seized from Bullivant

14 Hollis asserts in his first amended statement of interest  
15 that he has an ownership interest in the Bullivant funds. (First  
16

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17  
18 <sup>3</sup> The government contends that Hollis only held title for  
19 Brown as a "straw man" because: (1) Hollis told agents that the  
20 funds consisted of TCE reserves; (2) the funds were transferred  
21 to the trust account within weeks of Brown's arrest; and (3)  
Hollis only transferred the funds to his personal account once he  
learned that the government had seized the \$1.2 million from the  
trust account. (Cross Mot. at 24.)

22 <sup>4</sup> The cases cited by the government to the contrary are  
23 inapposite because standing was addressed in those cases at later  
24 stages of litigation. See United States v. Real Property Located  
25 at 5208 Los Franciscos Way, Los Angeles, 385 F.3d 1187 (9th Cir.  
26 2004) (standing addressed in summary judgment motion); United  
States v. One Parcel of Land, 902 F.2d 1443, 1444 (9th Cir.1990)  
(court denied claim on standing grounds after full adjudication);  
United States v. \$515,060.42 in U.S. Currency, 152 F.3d 491, 498  
& n.6 (6th Cir. 1998) (standing addressed in Rule 59 motion after  
court dismissed case on eve of trial on statute of limitations  
grounds).

1 Am. Statement of Interest at 1.) The government argues that  
2 Hollis is judicially estopped from asserting an interest in these  
3 funds because he did not claim an interest at all in the May 2005  
4 stipulation and only asserted an interest as a trustee for an  
5 unnamed beneficiary in December 2005. (Cross Mot. at 20-21.)  
6 Not until his first amended statement of interest filed in  
7 January 2006 did Hollis assert an ownership interest in the  
8 funds. (Id.) The government also contends that Hollis has  
9 failed to assert a sufficient interest in the funds.

10 Without reaching judicial estoppel, the court finds that  
11 Hollis has failed adequately to allege standing as to the  
12 Bullivant funds.

13 Hollis claims that the defendant \$177,695.11 funds were  
14 originally in his attorney-client trust account, but he  
15 transferred them to Bullivant to be used as attorneys fees.  
16 (Hollis Opp'n at 8.) He further asserts that when Bullivant  
17 terminated its representation of Brown, it was obliged to return  
18 the funds to Hollis. (Id.) From this, Hollis concludes that he  
19 has an ownership interest in the funds.

20 Hollis' conclusion is incorrect. It is undisputed that the  
21 funds that Hollis advanced to Bullivant were owned by Brown  
22 because they were transferred from Brown's Scotiabank account  
23 into Hollis' attorney-client trust account at First California  
24 Bank. "Costs advanced by a nonclient third party on the client's  
25 behalf [such as the funds here] must . . . be held in a client  
26 trust account because such funds are received for the client's

benefit." Paul W. Vapneck, et al., California Practice Guide: Professional Responsibility § 9:106 (2005). Upon termination of employment, "the attorney must promptly refund to the client any part of a fee paid in advance that has not be earned." Id. § 10:362. Therefore, upon Bullivant's termination of representation, Bullivant was obliged to return the funds to Brown, not to Hollis. Because Brown died, Brown's estate was the rightful owner, not Hollis. As discussed earlier, "upon a client's death, the attorney must notify the client's relatives or estate representative of possession of client funds or property." Vapneck, supra, § 9:222. And, as also discussed above, if there is a claim upon the funds by a third party the attorney may have a duty to see that the claim is resolved by a court. But in no event would Bullivant have been justified in giving the funds to Hollis or to any other third party. Therefore, the court GRANTS the government's motion to dismiss regarding the Bullivant funds.

### III.

Because the court denies the government's motion to dismiss as to the \$225,958.84, Hollis' motion to stay is still relevant. Hollis asserts that continuing the forfeiture proceeding will burden his right against self-incrimination in the related criminal investigation. (Mot. to Stay at 7.) The government asserts that the court should enter a protective order in lieu of a stay because: (1) a protective order would adequately protect Hollis' right against self-incrimination; and (2) a stay would

1 burden the rights of "hundreds, if not thousands, of people [who]  
2 potentially have a stake" in this case. (Cross Mot. at 29-30.)  
3 The protective order envisioned by the government would allow the  
4 government to proceed with discovery and further pretrial motions  
5 "directed solely to whether Hollis has Article III standing to  
6 maintain a claim." (Cross Mot. at 31.) The court agrees with  
7 the position of the government.

8 Under 18 U.S.C. § 981(g)(3), a court "may determine that a  
9 stay is unnecessary if a protective order limiting discovery  
10 would protect the interest of one party without unfairly limiting  
11 the ability of the opposing party to pursue the civil case."  
12 Hollis has not demonstrated how his Fifth Amendment rights would  
13 be violated if he merely had to respond to discovery regarding  
14 his Article III standing with respect to the \$225,958.84.  
15 Therefore, the court issues a protective order limiting discovery  
16 to the issue of Hollis' Article III standing. This protective  
17 order is subject to revision for good cause shown.

18 III.

19 For the reasons stated above, the court: (1) GRANTS the  
20 government's motion to dismiss Hollis' claim for the \$1.2 million  
21 and the \$177,695.11; (2) DENIES the government's motion to  
22 dismiss regarding the \$225,958.84; and (3) enters a protective  
23 order that limits discovery in the forfeiture proceeding to the  
24 issue of Hollis' Article III standing as to the \$225,958.84 until  
25 the criminal investigation and prosecution of Hollis has  
26 concluded.

1 Hollis must file an answer as to the \$225,958.84 within 21  
2 days of the date of this order.

3 IT IS SO ORDERED.

4 Dated: July 18, 2006

5 /s/ David F. Levi  
6 DAVID F. LEVI  
7 United States District Judge  
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